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No. 461

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

KARL HALLER and MARIA HALLER,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION

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The most eminent Justice of the liberal tradition once said that "most men think dramatically, not quantitatively" (Holmes, "Law and the Court", in collected legal papers 293 (1921)). If this is true, a reading of the trial transcript of this action ought to excite some wonder and little meditation. This case presents a means of administering justice unobstructed with the impedimenta of due process, evincing a wanton disregard of the constitutional guarantees provided and afforded to the accused herein; and quite contrary to the absolute and primary essential safeguards which are necessary and salutary in the protection of individual rights in order to assure fair treatment in criminal prosecutions.

The background setting is sufficiently theatrical: the illegal and unauthorized arrest of the defendants by Postal Officials, without warrant, designed and executed with precise timing to prevent the said petitioners from completing their transaction in furtherance of the agreement with the complainants, and conspiracy between the postal authorities and Walter Roos to entrap petitioners. Then there were the court created delay of 18 months to await a decision of the *Dege* v. *United States* case; the dilatory tactics of the prosecutor; and the allowance of improper and unrelated evidence by the trial judge over the objections of defense counsel, all of which were highly prejudicial to the cause of the defendants and fatally detrimental to defendants when the same was presented to the jury. The trial judge erred in failing to instruct properly the jury as to the inferences set forth and further erred in denying the motion of defense counsel after trial to acquit, notwithstanding the verdict, because of the insufficiency of evidence, or in the alternative, to grant a new trial. These are ingredients of a new jurisprudence.

The very foundation of the prosecution's case rests solely upon the inconsistent, varying and colored testimony of interested parties, to wit: the complainants, and without further substantiations or corroboration from any other source. The attention of the court is invited to the fact that although complainant could not comprehensively read English, when shown the copy of the agreement in English, he stated that it was the agreement with defendants. On the other hand, the contention of good faith on the part of the petitioners was upheld throughout.

The advertisement itself which was published in the New York issued German language newspaper and to which the

complainants responded indicated that the petitioners intended to *open* a factory in the New York Area and that some machinery and other materials were available for use for the contemplated venture.

Walter Roos and Karl Hailer entered into a contract to the mutual satisfaction of the parties, and to further secure Mr. Roos against loss, Karl Haller signed a personal promissory note for the repayment of the said principal amount and added interest of twelve (12%) percent repayable five (5) years from date, or, upon notice by Roos to Haller, the same would be paid twelve (12) months from the receipt of the notice. (By reference, in N. Y. State such interest beyond 6% is usurious, which defendants never sought to avail themselves of such fact.)

That thereafter as shown by the evidence, Karl Haller, did set out to acquire a factory and kept the Rooses informed of the progress, however, the delay occasioned in finding a suitable location and within only one (1) month after the money had been given herein to Karl Haller, the complainants were aroused by a seed of suspicion which caused them to go to see the postal authorities.

The testimony elicited from the defendant, K. Haller and a parade of other defense witnesses corroborated the statements which were made to the Rooses.

It is submitted that the petitioners herein demonstrated good faith at all times in their dealings with the Rooses, and good faith is a complete defense to a mail fraud charge or prosecution. (*Beck* v. *U. S.*, 305 F. 2nd 595, 9 L. Ed. 2nd 123; *U. S.* v. *Harris*, 261 F. 2nd 792.)

Respondents are straining to attempt to distinguish the case at bar, however, the facts of this case do not fall with-

in the settled rule. Here, one of the defendants to wit, Maria Haller, as early as 1961, stated in open court that she wanted to proceed to trial; and prior to this the court itself denied the petitioners the right of a speedy trial because of the court created delay, to await the decision of a case before the United States Supreme Court, *Dege* v. *U. S.*, 364 U.S. 51. It is submitted that dismissal is imperative in all cases of court-created delay wherein the prosecution is permitted to defeat prompt trial by pressing for tactical advantages. From the facts in this case it can be readily gleaned that the prosecutor has directly caused a delay in the trial of the action, and the petitioners have not waived their rights at any time during the proceedings.

In *Taylor* v. *U. S.* (1956), 98 U.S. App. D.C. 83, 238 F. 2nd 259, the court stated further that a defendant complaining that he has been denied his constitutional right to a speedy trial need not show that he was prejudiced by the delay.

We respectfully submit that the petitioners under recent decisions do not need to show "plain reversible error in their trial", but that the government is held to have the burden of showing that the appeal would be futile which we aver has not been done herein, and therefore, the requested relief should be granted.

Desmond v. *U. S.*, U.S.C.A., 1st Circuit, decided, June 25, 1964 (Vol. 152—No. 86, N. Y. Law Journal, Oct. 30, 1964, page 1);
Ellis v. *U. S.*, 365 U.S. 674 (1958).

It is further submitted that the allowance into evidence over objection of defendants' counsel that unrelated prior

acts that occurred in California concerning these defendants as manifested by the trial record and which were not part of any charges in this indictment, and not criminal acts, but were legal acts that were separate, distinct and committed at different times and places and not provable by the same acts charged herein, was evidence that was of substantial prejudice to defendants' case; and added to the distraction of the jury. The trial record indicates sufficient possibility of prejudice by reason that the jury may use the evidence of irrelevant acts not charged and not part of any alleged scheme, but allowed into evidence to infer criminal disposition on the part of defendants, and may cumulate this evidence with various violations charged and find guilt when, if considered separately, it would not so find. (*Nathan Drew* v. *U. S.*, U.S.C.A., District of Columbia Circuit, decided February 13, 1964, Volume 151, No. 128, N. Y. Law Journal, June 30, 1964, Page 1; and *McElroy* v. *U. S.*, 164 U.S. 76.)

When the prior acts have no relevance to acts committed and with which defendants are charged with crimes, said acts are inadmissible. The tendency is to create hostility, surprise and confusion of issues, and the law endeavors to preclude the danger of unfair prejudice. These acts were not charged, in the case at bar, as being a part of any scheme, and the appellate courts have stated that the majority of average intelligent people acting as jurors are prone to draw illogical and incorrect inferences and conclusions without adequate foundation, and when such acts are permitted to be introduced as evidence in trials as herein, they result in reversible error, necessitating at least a retrial.

Underhill, Criminal Evidence, Sec. 205 (5th Ed. 1956);
Martin v. *U. S.*, 127 F. 2nd 865;
Boyer v. *U. S.*, 132 F. 2nd 12.

For the foregoing reasons set forth herein, and in our petition, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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